

UPPER CLARK FORK STEERING COMMITTEE
Minutes February 1, 2001

MEMBERS PRESENT:

Gerald Mueller	Facilitator	Gary Ingman	MT DEQ
Eugene Manley	FC & MWRA	Kathleen Williams	MT DFWP
Howie Cortright		Bob Bushnell	Lewis&Clark CD
Jim Dinsmore	Granite CD	Holly Franz	PPL Montana
Brent Mannix	N. Powell CD		

MEMBERS ABSENT:

Bob Benson	CF Pend Oreille Coalition	Mike Griffith	Lewis & Clark
County			
John Vanisko	Deer Lodge Valley CD	Michael Kennedy	Missoula County
Jules Waber	Powell County	Audrey Aspholm	Anaconda/Deer
Lodge Cty			
Ole Ueland	Mile High CD	Martha McClain	Missoula CS
Jim Quigley	Little Blackfoot	John Sesso	Butte-Silver Bow
Robin Bullock	ARCO		

VISITORS PRESENT:

Dennis Workman	?
Mike McLane	MT DNRC
Susan Russell	MT DNRC

The Upper Clark Fork Steering Committee met Thursday, February 1, 2001 in the Bannack Room at the DNRC Building in Helena, MT.

WELCOME:

Gerald Mueller welcomed committee members and visitors and called the meeting to order. The agenda for the meeting was as follows:

Nevada Creek Rehabilitation Funding
Georgetown Lake Watershed Group
Clark Fork Task Force
Water Legislation
Instream Flows for the Upper Clark Fork

Nevada Creek Rehabilitation Funding: At the last steering committee meeting the group directed Dennis to follow this project. The hearing took place before he found out about it, but he drafted a letter for the committee's consideration when they took executive action. The letter was addressed to Sen. Keenan, and each member of the joint committee received a copy. This project was number 2 priority in the renewable resources grant and loan program. Dennis included language asking for as low an interest rate as possible. Mike distributed a handout provided by John Sanders of DNRC. On the third page: funding for the Nevada Creek proposal comes from five different sources. \$1,859,710 comes from hydro earnings that are generated by the Toston hydropower plant. This revenue is earmarked for storage repair and restoration. This account is being tapped and is part of HB 2 and part of the DNRC budget. The last item under in-kind contributions is staff time from DNRC. \$500,000 comes from a percentage of RIT money that goes into a storage account, and that is part of HB 2 also. HB 8 contains the low interest loan. Sen. Tom Beck was asking the committee for a 0% loan or approaching 0% for Nevada Creek, and the committee was inclined to consider it favorably. It has been a fixed rate in the past. John's handout lists 4 ½ % in parentheses. The state has developed an agreement that for projects showing water conservation

efforts, 4 ½ % is automatically the top figure, so it will be something lower than that. Other pages contain the total cost and a proposed project development schedule and engineering diagrams. There is nothing else to do at this point except to have someone available to answer the committee's questions. John Tubbs could be that person. DNRC would like to get the same deal for Bair Creek reservoir on the upper end of the Musselshell.

Question: what is the projected life of the dam? It is filling up with sediment and losing storage capacity. It lost about 1,000 acre feet to erosion, but it has 25,000 acre feet of storage. This project is looking at some spillway work and drainage work.

Jim Dinsmore: On Willow Creek, which was a little different--a loan authority--it was something like the first \$250,000 was 4 ½, up to \$500,000 was three, and anything beyond that was zero. Funding source was the same. At their hearing they were using some generic NRCS figures, and the committee questioned their ability to pay. Tom Beck was aware of the East Fork project, which is almost an identical location, and asked how they could pay three times as much for water. They couldn't—it was an error. Willow Creek is determining what has to be done with a feasibility study. If you don't have the ability to pay, they will look favorably at a 0% loan.

Georgetown Lake Watershed Group: Gerald was charged with trying to find another source of funding other than from the steering group. He found some BOR money that DNRC was able to apply, so it is being funded separately, although Gerald is acting as facilitator. They are trying to understand what factors influence the lake levels. Butte Silver Bow is not exercising their rights to store Silver Lake water in Georgetown and pump it back out in the winter when there is concern about lake levels in terms of the fishery. The pumps are not working yet, so that hasn't happened since the Anaconda Co. smelter shut down, and we're not sure when it might start. There was news this morning about the power plant that is going to be built in Butte. When John described that project, it was going to be 350 megawatts, but it's been raised to 500 megawatts.

Holly: They will be using Silver Lake water. Their demand is 4 million gallons per day, so multiply by 1.55 to get about 6.5 cfs. Georgetown Lake is the last storage of any use, so they wouldn't put any water in Georgetown Lake until Silver Lake was full. You wouldn't bring it back because you would have to pump it twice, so it would be the most expensive water up there. Butte Silver Bow reserved for itself 12 million gallons per day for new industrial users. Continental Energy would be the first new industrial user on line. There are direct flow stream rights that go with Silver Lake. She thinks they will not have to use Georgetown storage. Historically water of Georgetown basin origin was brought over from Georgetown, but that isn't going to happen any more. All Butte Silver Bow has now is the right to put Silver Lake water into Georgetown and bring that water back.

Gerald Mueller: David Schultz explained some work has to be done on the pumps, so they can't start moving water immediately. The group is looking into well development around Georgetown Lake as another possible source of impact on lake levels. In the view of one of the members, most of the wells around Georgetown are around 300 feet deep and below a clay layer. The wells may be putting water in the lake through septic systems. Another factor is possible evaporation loss, according to John Ormand, at least in the winter, of one inch per month, which is negligible. Operation of the irrigation system in combination with the East Fork reservoir is another significant potential factor. There is a meeting next Tuesday with Eugene Manley, John Ormand, Terry Voeller and Harold Holm, who is a representative of the homeowners, and the Steve Gurdis of the Forest Service. Then they will make a presentation to the next watershed committee meeting. Some of the homeowners got involved because they want to understand how the lake creek system works and its potential relationship to Georgetown. Gerald thinks people don't understand the water rights situation there.

Eugene Manley: There are no irrigation rights out of Georgetown. At some times of the year when flows into the lake exceed 30 cfs, there might be possible demand from the lower decree for water.

Gerald Mueller: It appears we are headed into another low water year—predictions are for 75% of normal flows in the Clark Fork Basin unless it snows and rains a lot more. They have asked Wayne Hadley to

explain what the fish need—there have been fish kills in the past, and the latest report shows oxygen levels reaching historic lows. With ice on the water, some photosynthesis takes place. The lake froze early and with snow on it, the lake is pretty dark.

Jim Dinsmore: Wayne believes the number of days with ice on the lake is more important than the lake levels. When the plants die, decomposition eats up the oxygen. By spring, the water has a strong methane smell. Past efforts to aerate the water have been unsuccessful, and in some cases have made it worse.

Jim Dinsmore: If Butte Silver Bow decides to store water in Georgetown, they have to have room to do that. How do you store water when the lake is full?

Holly Franz: That's a good question. When the lake is full, could they require that water be moved out to make room for their water?

Jim Dinsmore: That's going to become an issue. Everyone interested in the lake seems to think it makes sense to store as much water as possible. When they say the lake is full, does that mean the capacity of the dam is maxed out?

Holly Franz: Originally it would have been the FERC requirements of what a full pool is.

Dennis Workman: As far as we can tell, there isn't anything on that. When Butte needs the water, they'll start managing it. One of the questions posed was whether there is a legal requirement you couldn't fill the dam to the spill level. One foot was one of the numbers people were questioning. At their last meeting, DNRC said as far as they know, there isn't a number like that.

Jim Dinsmore: The spillway crest is the optimum level. And that's 24 ½ or 29 ½. They surveyed that last week to determine the correlation between the gage and the spillway crest.

Gerald Mueller: From a dam safety perspective, Jim Beck and Laurence Siroky said there are no restrictions. Jim raised the Highway Department's concern about how fast you can let water out, and someone is checking on that.

Jim Dinsmore: At one time there was an agreement about trying to limit flows out of the lake to protect the highway below the dam, but he doesn't remember who what or when.

Question: How much fluctuation in the surface area of the lake if they only store the exact amount they can and only take the amount of water they can?

Jim Dinsmore: We still don't have an accurate figure on the top surface—numbers are mentioned from 3200 to 2800 acres at the top. It's 7 or 8 inches. Butte Silver Bow seems to think that's insignificant, but as a water rights holder, Jim thinks it is very significant.

Gerald Mueller: It's 19, 20, something like that, that their right is.

Jim Dinsmore: But we don't know what the surface area is. He thinks the 2800 figure was measured at about a foot below full, and he thinks it's closer to 3200. This is an issue that needs to be dealt with. If you raise the lake to full pool at the spillway crest, there is a possible problem with highways and boat docks. The CD is looking at putting in a staff gage that you could read from the highway. It would go in the little pond across from Seven Gables. There is not much wave action there.

Gerald Mueller: There have been differences of opinion about how high the lake is, and we need agreement about the measurement system. It is positive that a group of people is working together to develop some shared information about this system.

Dennis Workman: The biggest problem with the fish kills was when Anaconda Company used to take 5-6000 acre feet and create mudflats.

If they wanted to sell power again, there are several problems. The pipe was hard to maintain. The FERC license has been surrendered, and it would be a long process to re-start it. Holly Franz: The county would be required to go through FERC licensing. A small hydro would be a more generic process.

Eugene Manley: The county commissioners are thinking of hiring John Westenberg. His initial advice would be to file for a change to instream flow down to the first diversion in Flint Creek. That depends on what DFWP thinks about that.

Jim Dinsmore: If you change to an instream, do you keep your same priority date? Consensus was yes. Why would you just protect it to the first headgate?

Eugene Manley: There might be other consequences if you go beyond the first headgate.

Holly Franz: If this was a nonconsumptive use, and it was used at the power plant, typically the way an instream flow works, you can only pass the point of diversion or in this case the place of use, you can only protect the percentage that is being consumed. Nothing was consumed, so once that water got past the power plant, it would be available for anyone to use it. She thinks that is the reason for that recommendation.

Jim Dinsmore: To go that route, you have to have concurrence from DFWP that this is beneficial. How can it be beneficial coming down off the side of a mountain?

Mike McLane: Through the Upper Clark Fork leasing program or the temporary leasing program, the county could do the change and hold the instream flow right themselves, but they are still required by statute to show the fishery benefits.

Gerald Mueller: One of the purposes of this group is to participate in the water rights change process, which DNRC hopes should make the EIS process simpler. Jim Dinsmore: He is concerned that someone will step in and say, "You have no storage right." Mike McLane: In a drought year someone with senior rights, who had short-term objectives and knew the storage wasn't being used, could make that claim.

Question: Is it possible to have a use for fish? Jim Dinsmore: The federal judge said so. Mike McLane: Maybe we don't need a change. Maybe the nature of the right needs to be clarified in the adjudication process so there is a principal use for hydropower and secondary uses for in-lake benefits and downstream irrigation—multiple uses instead of the single hydropower use. The old decree doesn't say that explicitly, but seems to imply it. Holly Franz: It sounds like the lake owner should be subsidizing the dam in some way—the use of the dam is for the lake right now, not for the downstream flow. Eugene Manley: They concluded an equitable settlement of 30 cfs. Jim Dinsmore: If water is being stored in Georgetown and moisture conditions haven't improved by May 15, there is going to be a big demand for decreed water. There are still questions about the agreement the county commissioners signed binds them to continue storing.

Question: What happened when MPC had it at 30 cfs? Jim Dinsmore: The issue is the 5 cfs they're releasing now. If that continues until the end of May, something will happen. All the irrigators on Flint Creek expect to have water by May 15th. Gerald Mueller: The issue is settled between the parties to the agreement, but there are a lot of other parties. Mike McLane: The county advisory committee has been working with MPC/PP&L employees to look at how they gauged storage and run-off. They gave a presentation at the last meeting. If that model can be applied, it might help to schedule storage and maybe build agreement on storage and releases this year. Even though MPC is not involved, it is a predictive tool that may have some value.

Question: Is it a good thing they lowered the outlet from 10 to 5? What is the minimum flow for the fish? Dennis Workman: There's probably not 10 cfs going into the lake in the winter. There is some gain. Jim Dinsmore: MPC ran the power plant in the winter—that's when they needed the power the most. DFWP signed off on taking 5 cfs.

Mike distributed copies of the historic record of inflows, outflows and lake levels. There are springs all around the lake, so it is hard to measure. This time of year it is possible to estimate inflows on whether it is gaining or losing. There is little evaporation. We still don't have a good handle on capacity. If the model was operational, they could make measurements running against the model and calibrating it to pinpoint inflows if they knew the outflows.

Brent Mannix: What would be the minimum outflow for fish habitat below the dam? Jim Dinsmore: You have to get to Trout Creek before Flint Creek really gains below the power plant. It kind of depends on what the groups think about bull trout recovery and Flint Creek. If you get to Hall, Flint Creek is running a lot of water. No one knows quite where it's coming from. Eugene Manley: It's coming from irrigation from the East Fork. The basin has changed considerably since the East Fork project was put in. The water flowing into the Clark Fork after the first of October is unbelievable compared to what it was before the East Fork. Jim Dinsmore: A lot of it is from return flow, but Willow Creek is gaining close to 20% capacity—winter flows are above average, and there isn't any irrigation above it.

Dennis Workman: How was inflow determined? Gerald Mueller: MPC used a spreadsheet model they ran on a PC. Because they knew the power production, they knew the outflows, and they measured the lake levels occasionally and used the spreadsheet to calculate the inflow. Mike McLane: They have a survey of the reservoir storage, so if you know outflow and change of elevation levels, you can calculate inflows. Gerald Mueller: Our group and the advisory committee to the county could run this model. It may be necessary in 90 days unless something changes.

Clark Fork Task Force Legislation: The meeting this group and Steve Fry had with Governor Racicot resulted in this legislation being drafted. The Governor recognized that the situation couldn't remain the way FERC left it when they issued the licenses for the two dams.

Mike McLane: The legislation Mike drafted was heavily modeled on legislation that formed the Upper Clark Fork Steering Committee almost nine years ago, and incorporated some ideas that came out of the negotiation process. Rep. Verdell Jackson agreed to sponsor it. He became heavily involved in the public outreach in the Flathead after the temporary closure last year. The bill drawn up by the Legislative Council looks different, but the concepts are essentially the same—putting together a collaborative process and a task force of multi-interest water users with representation throughout the Clark Fork Basin. There is a new Section II. People in the Flathead would not agree to extend the temporary closure, so it terminates in March. You can get new water rights in those portions of the Clark Fork that are not affected by another closure. Things don't change in the Upper Clark Fork, the Bitterroot or the Blackfoot, but you could apply for a permit by Noxon or on Flathead Lake, unless tribal issues tie it up. Litigation with the Confederated Salish Kootenai Tribes is tying up new permits in the Flathead. Since there is the potential to get a new water right, Avista asked that a notice be added that tells applicants for a permit they would be junior to senior rights. A phrase in section IV, 4(d) says, "Identify options for the uniform enforcement of water rights in the Clark Fork Basin on the basis of priority." Steve Fry said their attorney Blair wanted it. If the Task Force doesn't develop a plan for enforcement, this is what you'll get. Of course, this language may be changed in the legislative process. There is a hearing on this bill February 8 at 3:30 before the House Agriculture Committee.

Mike acted as facilitator for the public outreach process during negotiations between DNRC and Avista. Mike put together a two-page report identifying the issues. He attributed the concepts for the legislation to this group by reporting their meeting to the governor. Time precluded clearing the report with this group, and Mike took full responsibility. People who attended the meetings in Deer Lodge, Noxon/Thompson Falls and the Flathead received a copy of Mike's report.

Governor Racicot was willing to support the bill, but he was also talking about a budget. Governor Martz felt it required a tax increase that she was unwilling to support. The budget that was attached to this bill was removed. Mike distributed copies of the fiscal note prepared by DNRC. The first 3 pages were the formal fiscal note, and the last 3 pages were Mike's assumptions. After our director visited with Rep. Jackson, they added \$20,000 that they think may come from federal grants and private contributions. Mike

included money for a facilitator and technical evaluation of reports that were done in the mid-80's that looked at predicted impacts related to consumption. To seek approval on amendments before the hearing, Mike scheduled a meeting on February 2 at DNRC's Forestry Division in Missoula to be attended by Len Lindberg from the Blackfoot, Rock Sprint from the Bitterroot, Bruce Farling from TU, Mark Spratt, Ron Bunkmeister from the Flathead and Jim Dinsmore.

Gerald Mueller: We have tried to inform the Tribes and invited them to participate, but they haven't indicated any interest so far. Clayton Matt (??) is their head water person. It will be difficult for this task force to work very well without the Tribes because they are in the middle of the basin. They have significant water management responsibilities, and they think they have some solid water rights. They are negotiating with the State over a compact. Gerald has tried to assure them this is not an attack on their negotiations or water rights or sovereignty.

Jim Dinsmore: Steve Fry has heartburn with the lack of action at this point. Jim asked him if the window of opportunity that Avista was willing to work in was closing, and Steve said "yes." Considering the realities of the energy situation, Avista's profit line could determine when they start enforcing their rights. This was technically a possibility a year ago, but now it could happen. They are taking a lot of water out of Hungry Horse and Libby, and every day we are getting less water in the basin. He is worried about some language in the bill. He sees frustration occurring since negotiations ended.

Gerald Mueller: They are still operating in states that are not deregulated. The Public Service Commission could raise the question: "Why aren't you enforcing your water rights to maximize the value of hydro production?" Gerald thought the "uniform enforcement mechanism" language in the bill meant the group was being asked how to enforce the water rights. Enforcement is a big issue, and this group had in mind something more like what's happening in the Big Hole where people are working things out on their own. It would be harder because this is a very large basin with big parts and different sovereigns.

Holly Franz: Based on the Missouri water availability study, DNRC is working on some specific conditions. Depending on where you are, a new permit would say something like, "If the USGS gage at Thompson Falls is less than so many cfs, you cannot take water." This kind of information is becoming available on the internet.

Mike McLane: In talking with Steve and Blair, they consider that as an alternative, not what they are recommending as a solution. The way this is worded, it could be interpreted as a solution. Steve will try to join the meeting in Missoula in person or by phone.

Gerald Mueller: This is what the future will be like after the adjudication process is finished, like Eugene has said.

Water Legislation

Mike McLane and Holly Franz discussed water-related legislation.

HB 33—Cindy Younkin—Short-term water right lease for road construction

HB 114—Bob Story—Revise water use act

HB 129—Keith Bales—Exempt replacement water wells from change authorization

HB 340—Cindy Younkin—Review requirements for subdivision regulations

HB 455—Dave Lewis—Revise term of temporary change of water right for instream flow (good chance of passage)

HJ 114—Aubyn Curtiss—Urge state role in managing Columbia River Basin

SB 160—Lorents Grosfield—Clarify need for water right (became coal bed methane issue—everyone opposed it)

SB 345—John Cobb—Voluntary sharing of irrigation water rights (has been killed in last 3 session)

SB 364—John Cobb—Conservation district exemption under streambed and land preservation laws

Unintroduced bills

LC 219—DNRC requested an interim study on water rights for ponds, but no one wanted to carry it—draft canceled
LC 1458—Jim Shockley—Move some enforcement authority on water right complaints to Attorney General's office
LC 1576—Larry Lehman—Revise adjudication of late water claims (Holly doesn't think it will go too far.)
LC1533—Dee Brown—Water banking and leasing (no information available)
LC 1648—Gail Gutsche—Maintenance of instream flow (There is already a 10-year pilot program.)
LC 878—Jon Ellingston—Resolution to urge EPA to require long-term solution to contamination from Milltown Dam. (Kathleen said this is the same as last session. Rep. Ellingston may not pursue this because, if it fails, the EPA might consider it an indication of public sentiment in general.)

Instream Flows for Upper Clark Fork

Good news. Dennis Workman distributed an outline. One of the purposes—maybe the main purpose—of this committee was to find some solution for instream flows so the department could put their reservation flows on the shelf. Gerald asked Dennis to look at the possibility of getting instream flows for the Upper Clark Fork. If it is possible to get instream flows, there are a lot of aspects to keeping it in the river and developing agreements with landowners and water right owners. To see if there was any interest, Dennis targeted those with ownership of old rights and fairly large quantities. Jim Beck and Mike McLane put together a map of "Irrigation Diversions on the Clark Fork." From Warm Springs to the Kohrs/Manning (???) diversion just below Deer Lodge. The map indicates it is not as complicated as it seemed. The agreement asked Dennis to look at three stream reaches on the Clark Fork, which came out of the dewatered stream list.

Gerald: In the plan, the DFWP produced a dewatered stream list that is an appendix that goes on for many pages. Gerald didn't find that very useful in deciding where to tackle this. He asked Dennis to determine what matters for fish the most? What kind of dewatering are we talking about? How long and how much? This is one of the areas where it matters because there is significant dewatering, which Dennis defined in certain ways.

Dennis: From the Westside Ditch point of diversion upstream, there is one relatively good-sized irrigation system, the old Johnson ditch. If we could get some cooperation there, we could get instream flows for 5 or 6 miles of channel. From the Westside Ditch on down it depends on getting cooperation from a lot of people. The Westside Ditch is the key, and they want to do something.

Dennis: This section is seriously dewatered 1 out of 5 years, and 4 out of 5 years it is dewatered to the point where fish production is limited. When there are low flows, the fish population is at risk in moderate or heavy rainstorms—possibly a total wipeout situation. In talking with biologists in the upper river about tributaries, Racetrack Creek seemed the top priority for trying to get instream flows. Looking at the water rights there, Dennis doesn't know if we'll be able to resolve anything. He has been talking with people with the older rights. The oldest rights in the river date to 1875, one of which is at the Westside Ditch. Everyone is positive about doing something. There are opportunities like lining leaky ditch systems to save water. The Westside Ditch wants to put in a pipe. The Johnson system runs through sand, and the river cuts into it in places. Leases are a possibility to protect the river.

Everyone is concerned about the rise in energy costs. This is another opportunity to help people make their systems more efficient. In at least one situation ditch consolidation makes sense. There are problems and would take some negotiation. Agreements would have to be written to protect everyone so they don't have to go to lawyers to get their water. Dennis hasn't talked with several people who hold key water rights, like Arnie Mohl, who is busy in the Legislature.

Howie Cortright: The whole east side of the river is an EQUIP priority area right now. EQUIP is a federal program. They are going to expand it to the other side between the ponds and Deer Lodge. There is some money there. It is expensive to put ditches in pipes. The American Fisheries Society recently held a continuing education workshop entitled "Fisheries Management in Drought". Kathleen helped with the workshop and did a great job. Roy Kaiser, from the NRCS was also in attendance. Roy runs the snow

survey program and the key to running a complex system is the ability to forecast stream flows. It seems like the Upper Clark Fork Basin is pretty well wired in terms of snow survey and forecasting flows. That is a resource we could draw on to make a project work. Something else that came out at the workshop were success stories that individuals from the Jefferson, Big Hole and Blackfoot shared with the group. These are three good success stories that would be worth the time to have Jim McGee or Ron Spoon come over and discuss it further. Communication with guys like Ron and Jim are good because we don't want to set a different precedent. Keeping water in the river is the biggest issue. Once you make agreements or lease water from major holders how do you get past the diversion points of junior users. The _____ now has a temporary preliminary decree on it and that is enforceable by the district court. It would be possible to have a ditch rider to have someone working with that decree. Keeps peace in the valley. Questions still unanswered are, if the board decides to proceed, how do we go about setting it up, who's in charge, who holds leases and how is it managed. Attitudes in the Upper Clark Fork Basin are conducive to going forward.

Jim: Is there water introduced into that stretch through settlement with ARCO and DFWP from Warm Springs Creek source?

Technically there should be some water coming out of Warm Springs Creek.

Holly?: The problem is until we get the litigation concluded with Flint Creek, or Granite County water users association, then the DNRC change process for the instream flow isn't going to happen. There isn't a mechanism once it hits the Clark Fork. Once it hits the river, it is up for grabs.

Dennis: Feels that the channel is different enough to where more work done in determining what instream flows are actually needed there. Work needs to be done in terms of water quantity. The next step would be to talk to landowners to see what it would take to get a lease, or water for the river.

Gerald: How does this overlap with TMDL effort and is there a possibility of working together?

Gary: To the extent that our _____ water list overlaps with DFWP's dewatered stream reaches. We are required to do TMDL's for streams that are dewatered. There is specific language in HB 546 that says we can't interfere with any existing water rights. They can't make anything happen. It has to happen voluntarily. Technically they are supposed to develop solutions to those kinds of problems. There are opportunities to team up to enhance fisheries at the same time we address water quality impairment problems. Gary thought that these projects might be candidates for 319 project funding. They certainly would be candidates for tapping the TMDL budget for monitoring and technical assistance and public outreach.

Kathleen: There is a flow TMDL based on a lease that is just about done.

Dennis: Opened it up for discussion.

Gerald: If progress was ever going to be made it was going to be talking to individual people to see if there is a deal that is possible. The deal may involve some expense. We need to make sure that there is value on the other side.

Kathleen: Kathleen has Fred Nelson, who invented the wetted perimeter modeling effort under contract with her. He might be interested in helping this group this summer. Possibly use it as a training session. It is just a question of where we put our priorities. Gerald: Dennis is going to continue to work on ways individuals would specifically be interested in. Howie: There has been quite a bit of work done on that. He's worked with several individuals.

Dennis: If some positive benefits could be factored in to show we are benefiting fisheries, it could open up a whole new funding possibility. Mike: With those savings and working a lease back into it, we should be able to capitalize on some money coming out of restoration projects. It's a matter of writing agreements and grants. Howie: The big problem is that more accurate measurements are needed. Mike: Howie, if a couple of hydrologists do some synoptic runs on those ditches several times over the summer, would that

get enough information about ditch loss? Howie: They hired a consultant, and Howie told him to get a current meter to run on Westside Ditch all summer, and that would give an accurate data base.

Dennis: Most are willing to lease as long as they don't lose the right. Kathleen: We could piggyback with Mike's folks because DFWP has a contract with the USGS to do spot studies, and some of our folks could do fairly simple measurements. About losing rights, one of our leases expired in the Bitterroot, and the statutes on the lease say the right automatically reverts to its former use. There was no objection. Mike: We need to finalize a needs list and a work plan. Then we can ask for design work and money to fund it. Gerald: Dennis is under contract already and finding out if people are interested and in what kind of deal. The deal has two parts: we need to find the money, and we need to make sure there is benefit to the fish. Kathleen: We do that kind of evaluation. Gary Ingman: How much information is in the original instream flow application that DFWP put together for the Upper Clark Fork? Did they set some goals that would allow us to quantify benefits associated with any pilot project? Dennis: At the time there were not enough resources, but there is fisheries information, general information about irrigation.

Gerald: With all your help, Dennis could do the next step, which is the assessment and work plan. Everyone agreed the Johnson and Westside ditch systems promise the "biggest bang for the buck." Howie: They are going to put a vortex (?) weir in the river for the Helen Johnson ditch some time next summer. He needs to do some more surveying. Dennis: We need to talk with Wayne about the highest priority from a fisheries standpoint. Howie: If you look at the diversions for the Helen Johnson and Westside ditches, they can actually shut the river off in both spots. Howie doesn't have the time to do any measurements. Mike McLane: Mike may be able to get someone from DNRC to go over six times during the summer. The cost wouldn't be high—you can do 15 measurements in a day and be back home. Dennis: One issue with water right owners is "If I leave my water in the river, will it stay there?" This is especially true if it involves a sacrifice and a junior user takes it. Howie: The last of the Lost Creek water goes into the Westside ditch—you could put all of that back in by fixing the headgate.

Gerald: We need to produce a work plan focussed on these two ditches. In terms of an assessment, maybe Kathleen could re-run the wet perimeter, and Mike could get some measurements from DNRC. How do we deal with the legal side of this?

Holly: There hasn't been a water commissioner on this stretch. She believes you would have to see if all the water rights have been decreed through the temporary preliminary decree. Then you would have District Court ask the Water Court to tabulate the water rights. The Water Court's tabulation would be given to a water commissioner. The way things get enforced is through the water commissioners.

Mike: It is a decreed basin. If there are not a lot of diversions, you might be able to run a few staff gages above and below diversion structures through the stream reach to Deer Lodge. If you measure the natural flow above the improved headgate, and have an idea what the losses are through some synoptic runs, you could get enough information without hiring a water commissioner. You would have to prove in the lease application that X cfs has been salvaged that is not part of the natural flow or the return flow regime. With some synoptic runs, you could get some agreement through the change process and some dialogue before that on what that value is both technically and socially. It becomes self monitoring.

Howie: There is a USGS gaging station on the bridge at Galen and Perkins Lane and at Deer Lodge. Dennis: Arnie Mohl has the biggest right. Dennis was thinking of contacting people with junior rights too. Kathleen: With DFWP leases they negotiate how much they are going to protect, which may be less than what they lease. It is hard for people to let water go by if they are suffering and junior, so sometimes it helps to sell it if they get some benefits as well as fisheries. Mike: If you're going to try and protect flows below the point of diversion, you have to develop a strategy without interfering with third parties. If you do that right, it may eliminate the need for a commissioner. In a tight water year, you may need a commissioner. Kathleen: Our preference is for a commissioner. Biologists need to be doing other things. We will be more willing to pay money if it is less time consuming to administer.

Gerald summarized the next steps:

- > Feasibility and Assessment
- > DNRC synoptic runs—with Howie
- > Wetted perimeter work—Dennis/DFWP
- > Negotiate lease—could be DFWP, TU, CD, water users—the steering committee is not a legal entity
- > Protect the water so it stays in the stream
- > Water quality plan 303(d) list

Funding sources: NRD, 319, EQUIP, settlement money, future fisheries program, American Fisheries Society, Trout Unlimited, Montana Trout and Salmon Foundation, (sounds like) Cinnebar Foundation, Turner Foundation. According to the Kleins (sp?), Montana Power is offering to help ranchers and farmers do away with their need for electricity. MPC has conservation programs too.

Jim Dinsmore: I assume all these ditches coming out of the river are open. Fish screens would be quite a fisheries benefit. They are very expensive. Maybe EQUIP money could be used.

Gerald: Reason for and when next meeting? Will meet relative to Dennis' work. We have \$5,000 general funding from DNRC watershed program and \$5,000 for Dennis. It looks like Nevada Creek is going to proceed and not need this group's assistance. The Georgetown work is on a separate course. Mike McLane: The Drought Committee meets on the 21st. If snowpack conditions continue to look bad, does this group want to get together and do what the Blackfoot and others did last year? Flint Creek and Nevada Creek put on commissioners early last year. The Blackfoot is meeting on February 28 to start laying out concepts. End February/ first March? Jim Dinsmore: What are we going to do? If you don't have water, you don't have water. What is there to address about irrigation? Practically everything is being done. Eugene: Thinks the key to Flint Creek basin is get the Marshall (???) and the Ulm (???) deal (???) much sooner. Jim agreed. Kathleen: Does this group see itself as a water conservation advocate in the basin? Would this group ever do a public service announcement or do you see yourselves more as looking at long-term solutions? Eugene: The key to it all is better water management. Gerald: Instead of the steering group speaking, how about individuals that people know? Traditionally, Jesse works with the Drought Committee, and the second week in August, the lieutenant governor asks people to shut off their irrigation. The Blackfoot has been much more active, and that made a difference. Dennis: Could there be a letter to the governor from this group urging an executive order earlier in the year? Many felt it was too late last year. Kathleen: It allowed conversion of water rights without going through the objection and notice process—it was a short-term streamlined process without paperwork. The group had trouble understanding why anyone would do it because there was no way to know the water was protected.

Gerald: The work Dennis is doing will get us the farthest toward repeating in the Deer Lodge valley what people have done in the Big Hole, the Jefferson and the Blackfoot. It doesn't seem likely that we would get the same cooperation with everybody cutting back, measuring and having points. Keith: For some of the bigger users on the Blackfoot who pump out of the river, would you have had better luck if they had been compensated for what they were losing by shutting off? Mike: Some irrigators who were using water for some critical spots might have shut down if there had been money for pasture or hay. Keith: Maybe the steering committee could encourage release of drought funds.

Gerald: Next meeting March 7th in Helena. It will be early enough to take specific steps if it is as bad as it looks now. Maybe another report from Dennis and have enough information to prevent the lieutenant governor from going around with cup in hand in August.

Jim Dinsmore: Did this group take a position on the Clark Fork Task Force legislation? Gerald: Jack Stults asked if anyone had any objection if the Consensus Council facilitates this work? Governor Racicot established the council in his office by executive order, and apparently it will continue. Matt McKinney is director with two staff persons—John Mundinger and Gerald and some others are on contract. Matt is proposing an amendment to the bill that the Consensus Council will form a task force. No one was opposed. Gerald didn't think any of this would be happening if they hadn't met with Governor Racicot. Our closure is one of the things they will look at. They aren't allowed to do anything with the closure, same as the Bitterroot closure. Kathleen: For our interests, it would be great to add an acknowledgment that instream uses would be considered in addition to hydropower generation. The DFWP hasn't taken a

position on this, but it would be helpful to identify that. Gerald: The strategy was to put as little as possible in the legislation itself so the people who make up the task force can decide what they want to do. That strategy isn't holding. People are putting specific things in. This will be discussed at the meeting to be held the next day. Mike: He kept working on water uses, but water rights kept getting interjected.

Jim Dinsmore: What are the priority dates for your Murphy rights? Kathleen: In the Blackfoot, 1971. The act passed in 1969. Eugene: It will affect every basin. Mike: They originally wanted interest and representation from basins. It has been simplified. It is supposed to include representation of various water uses within the basin and representatives from five specific reaches: the Upper Clark Fork, the Bitterroot, the middle section of the Clark Fork between the Blackfoot and the Flathead, the Flathead River itself including the lake and the Flathead above the lake and the Clark Fork below the Flathead. Flint Creek, Rock Creek, the Blackfoot, and the Upper Clark Fork are wrapped up into one. Gerald: Hopes everyone will be satisfied when it is done. Given the information that is available right now, no one in this group is opposed to this bill.

Mike: The hearing is at 3:00 on February 8. The meeting adjourned at 1:15 p.m.